IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.667 OF 1992

Lieutnant Colonel Flambaiy Pavithran ...Appellant

vs.

Dr.Amit S. Acharya
M/s.United India Insurance Co.Ltd.,Thane ...Respondents

Mr.S.M.Dandekar for the Appellant
None for the Respondents.

CORAM: A.S.OKA,J.
DATE : FEBRUARY 14,2007.

ORAL JUDGMENT:

1. The submissions of the learned Advocate for the Appellant were heard on the last date. Inspite of granting opportunities, none appeared for the Respondents.

2. The challenge in this Appeal is to the Judgment and Award dated 23rd August 1990 passed by the Motor Accident Claims Tribunal, Pune by which the Claim Petition filed by the Appellant has been partly allowed and compensation of Rs.1,96,986/- has been awarded along with the interest thereon at the rate of 12% p.a.

3. At the time of accident i.e. on 2nd June 1986, the Appellant was serving as a Lieutenant Colonel in the Army. He was proceeding on his Bajaj Scooter from Pune to Dapodi by Bombay Pune Road. A car driven by the first Respondent gave a dash to the Appellant. The said car at the relevant time was

insured with the second respondent. The case of the Appellant is that he was driving the scooter by left side of the road. According to him, the first Respondent was driving his car in a very high speed and in a rash and negligent manner. The first Respondent gave a dash to the Appellant from the rear side as a result of which the Appellant fell down from the scooter and he sustained fracture of tibia lateral condyle (left) and a lacerated wound on left eyebrow and abrasion on left forearm. The Appellant was immediately shifted to Military Hospital, Kirkee and was put in traction with his left leg tied from both sides in splints. He was hospitalised till 11th August 1986. After discharge he had to proceed on sick leave. Between 22nd September 1986 to 29th September 1986 he was again admitted in the hospital. According to the Appellant he was put to extreme physical pain and mental agony and disability on account of injuries sustained by him. As a result of injuries sustained in the accident, the Appellant suffered from hypertension. According to the case of the Appellant, due to the physical disability sustained as a result of the injuries caused by the accident, he was denied promotion. In normal course, the Appellant would have been promoted to the rank of full Colonel in January 1987. According to him he would have been promoted as a Brigadier and subsequently as Major General by June 1994. It is contended that the Appellant had to retire at the age of 52 years though he could have continued in the employment till

the age of 58 years. The compensation has been claimed on account of loss of income and on account of mental tension, torture,agony and pain.

4. After the contest by the Respondents, the Tribunal held that the first Respondent was driving his car in a rash and negligent manner and on account of such driving the Appellant sustained injuries. The Tribunal awarded compensation on account of loss of salary and a sum of Rs.25,000/- on account of mental pain and agony. The Tribunal also granted him compensation on account of loss of pension.

5. The learned Advocate for the Appellant submitted that the Tribunal has only considered the likelihood of promotion of the Appellant to the post of Brigadier. However, the Tribunal has not taken into consideration the possibility of the promotion to the post of Major General. It is submitted that the compensation on account of pain and suffering awarded by the tribunal is extremely on the lower side.

6. I have considered the submissions made by the Advocate for the Appellant. It is not necessary to discuss the issue relating to negligence as the same has been decided by the Tribunal in favour of the Appellant and there is no Appeal or cross objection filed by the Respondents. I have perused the evidence. It must be stated here that there is no specific

evidence led by the Appellant as regards any permanent disability or permanent partial disability. The Appellant has described the injuries sustained by him and mental pain and agony undergone by him. According to the case made out in the deposition, on 20th March 1987 he was examined by the Army Medical Board and the Medical Board recommended to give him category A-2 as a result of physical disability. Before examination by the Medical Board, he was given category P-2. On 5th August 1989 he was again examined by the Medical Board and was placed in low category of A-2 on account of fracture sustained by him. He stated that he was not promoted to the rank of Colonel as he was placed in low category of A-2 and P-2. He stated that by the year 1989 to 1990, he would have been promoted to the post of the Brigadier and after working for three to four years, he would have been promoted to the post of Major General. As a Major General, he could have continued in service till the year 1997. In the cross examination he admitted that he was given permanent low category i.e. P-2 as he was a patient of hypertension.

7. The Appellant examined Dr.Satyapal Jyoti who was working as Orthopedic Surgeon in the Military Hospital. He stated that in view of placement of the Appellant in category A-2 permanent, it is presumed that the Appellant cannot be 100% fit for the purpose of promotion. He stated that as a result of injuries sustained by the Appellant, he developed

ostoarthrosis. In the cross examination he admitted that the category P-2 is due to hypertension ailment. He stated that due to permanent low category of P-2, the Appellant had lost chances of promotion.

8. The Appellant also examined by Colonel Jaisheel Oberoy who stated that he underwent training with the Appellant. He stated that though both of them joined together, the Appellant was given two years seniority over him. The Appellant was holding a post of Lieutenant Colonel whereas he as holding a post of full Colonel. He stated that the Appellant had promotional prospects. Another witness examined by the Appellant is Gopal Ganesh Karmarkar who was working in Military Engineering Service as a Chief Surveyor of works. He stated that the Appellant was of high integrity and technically proficient. Other witnesses who have been examined are not material for deciding the quantum of compensation. The Appellant’s case is that he was placed in Category P-2 as a result of hypertension and the cause of hypertension was the injuries sustained in accident. Dr.Satyapal Jyoti who was examined as an expert has not substantiated that the ailment of hypertension had anything to do with the injury sustained in the accident.

9. Perusal of the impugned Judgment and order shows that the Tribunal has taken into consideration the amount which the

Appellant would get as a pension as a Lieutenant Colonel. The Trial court has relied upon a chart produced by the Appellant as regards his claim for loss of salary and income. The Trial Court granted claim of Rs.1,87,090/- towards pay and allowances till December 1994. As the Appellant was to get the said amount even before 1994, deduction of 25% has been applied. Calculation of salary payable to the Appellant has been made by accepting the case made out by the Appellant that in normal course, he would have got promotions to the post of Colonel and Brigadier. The age of retirement of the Appellant is taken as if he would have been retired from the service as a Brigadier. Considering the placement of the Appellant in category P-2, I find no fault with the said approach of the learned Member of the Tribunal. Therefore, compensation awarded on account of loss of income is reasonable.

10. In his oral evidence and in particular in paragraph 3 the Appellant has stated thus :

"3. I was admitted in the Military Hospital on 2/6/1986 and was discharged on 11/8/1986. My left leg had to be put in traction till 11/8/1986 and I had to suffer much physical pain and mental agony. Under medical advice I was again admitted in the Military hospital on 22/9/1986 and was then discharged on 29/9/1986. On account of the fracture of my left leg I am unable to

stand or walk for a period of more than 15 months as after this period my leg gives me pain. There is also a reduction in the muscle power of my left leg than the right leg. I am unable to do army exercises."

11. Perusal of the cross examination shows that there is hardly any challenge to the said aspect in the cross examination. It is also apparent that due to injuries, the Appellant was placed in category A-2. The Appellant was in the Military service and as per the finding of the Trial Court, he would have certainly retired in the year 1994 as a Brigadier. Apart from pain and sufferings, there is a loss of status so far as the Appellant is concerned. It cannot be ignored that the Appellant was in the Army Service. If he would have retired as a Brigadier, the Appellant would have worked in a post of considerable honour and respect. Considering the fact that the Appellant had to be hospitalised for more than two months and considering all the aforesaid aspects, general damages of Rs.25,000/- awarded by the Trial Court are extremely on the lower side. In my view, the general damages of Rs.50,000/- ought to have been awarded and to that extent the impugned Award needs modification. There was no reason to deny interest from the date of filing of the Claim Petition. That part of the Award also needs modification. On the enhanced amount of Rs.25,000/-, interest at the rate of 9% will be payable.

12. Hence, I pass the following order :

i) Appeal is partly allowed.

ii) Impugned Award is modified by directing that the Appellant will be entitled to compensation of Rs.2,21,986/- (Rupees two lacs twenty one thousand nine hundred eighty six) instead of Rs.1,96,986/-. On the amount of Rs.1,96,986/- the Appellant will be entitled to interest at the rate of 12% p.a. from the date of filing of the Claim Petition till the date of payment. On the further amount of Rs.25,000/-, the Appellant will be entitled to interest at the rate of 9% p.a. from the date of filing of the Claim Petition till the date of realisation.

iii) The Appellant is entitled to proportionate costs of this Appeal from the Respondents.

iv) The second Respondent is granted time of 18 weeks to comply with the modified Award.

JUDGE